IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2190 OF 2004

IN
SUIT NO.446 OF 1990

Galaxy Fabrics Ltd. ....Plaintiffs

V/s.

Raghunath K. Sakpal & Anr. ....Defendants

Mr.A.B. Dubey, Advocate, i/b. Bharat Vaishnawa & Co., for the Plaintiffs.

Ms.Kranti Niwale, Advocate, i/b. P.G. Lad, for the newly added Defendants.

CORAM: S.J.VAZIFDAR, J.
DATED: 13TH SEPTEMBER, 2006.

P.C. :-

. The application for time to file affidavit-in-reply is rejected for two reasons. Firstly the Notice of Motion was taken out over two years ago. The excuse, therefore, that the plaint was amended only recently is not justified. The only amendment is the bringing on record of the heirs of Defendant No.1 who expired during the pendancy of the suit.

2. Further the order I propose to pass does not prejudice the Defendants in any manner.

3. The suit is filed for possession on the ground that the Defendant is a tresspasser. The Defendants alleged as recorded by an order dated 24th February, 1993 in an earlier Notice of Motion, being Notice of Motion No.813 of 1990, taken out by the Plaintiffs in this suit with the only defence that there was an oral agreement by which the Defendant was entitled to continue in occupation on payment of Rs.3,000/-.

4. By the said order the Court Receiver was appointed. The Court Receiver in fact fixed the royalty only at Rs.2,000/- per month. Thus even if the Plaintiff fails in this suit, the Defendant is bound and liable to pay the said amount to the Plaintiff. In the circumstances, there can be no ground to refuse the Plaintiff to withdraw the amount deposited from time to time by the Defendant.

5. In the circumstances, the Notice of Motion is made absolute in terms of prayer (a).

6. Likewise the Defendants shall also be entitled to withdraw the further amount as and when paid by the Defendants.

7. The Notice of Motion is accordingly disposed of.